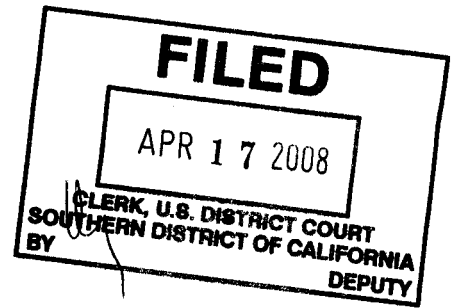


1 KAREN P. HEWITT
United States Attorney
2 DOUGLAS KEEHN
Assistant United States Attorney
3 California State Bar No. 233686
United States Attorney's Office
4 Federal Office Building
880 Front Street, Room 6293
5 San Diego, California 92101
Telephone: (619) 557-6549
6
7 Attorneys for Plaintiff
UNITED STATES OF AMERICA



8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

08 CR 1215 -BTM

10 UNITED STATES OF AMERICA,)
11)
Plaintiff,)
12)
v.)
13)
14 EVER DANIEL LOPEZ-DELGADO,)
Defendant.)
15)

Magistrate Case No. 08MJ1037

**STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS(ES) AND
ORDER THEREON**

(Pre-Indictment Fast-Track Program)

16 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
17 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and
18 Douglas Keehn, Assistant United States Attorney, and defendant EVER DANIEL LOPEZ-
19 DELGADO, by and through and with the advice and consent of defense counsel, Erick L. Guzman,
20 Federal Defenders of San Diego, Inc., that:

21 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
22 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
23 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
24 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
25 of Inducing and Encouraging Illegal Aliens and Aiding and Abetting, in violation of 8 U.S.C.
26 § 1324(a)(1)(A)(iv) and (v)(II).

27 //

28 //

WDK:psd:4/8/08

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **May 7, 2008**

6 4. The material witness, M.M.M., a male juvenile, in this case:

7 a. Is an alien with no lawful right to enter or remain in the United States;

8 b. Was induced or encouraged by defendant to enter the United States in
9 violation of the law on or about April 3, 2008;

10 c. Was found in a vehicle driven by defendant at the Otay Mesa, California Port
11 of Entry (POE) and that defendant knew or acted in reckless disregard of the fact that he was an alien
12 with no lawful right to enter or remain in the United States;

13 d. Was having others pay on his behalf \$2,000 to others to be brought into the
14 United States illegally and/or transported illegally to his destination therein; and,

15 e. May be released and remanded immediately to the Department of Homeland
16 Security for return to his country of origin.

17 5. After the material witnesses are ordered released by the Court pursuant to this
18 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
19 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
20 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

21 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
22 substantive evidence;

23 b. The United States may elicit hearsay testimony from arresting agents
24 regarding any statements made by the material witness(es) provided in discovery, and such testimony
25 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest
26 of (an) unavailable witness(es); and,

27 //

28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Ever Daniel Lopez-Delgado

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
 2 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
 3 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
 4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
 6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
 7 further that defendant has discussed the terms of this stipulation and joint motion with defense
 8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
 10 immediate release and remand of the above-named material witness(es) to the Department of
 11 Homeland Security for return to his country of origin.

12 It is STIPULATED AND AGREED this date.

13 Respectfully submitted,

14 KAREN P. HEWITT
 15 United States Attorney

16 Dated: 4/17/08.

17 *for* [Signature]
 DOUGLAS KEEHN
 Assistant United States Attorney

18 Dated: 4/14/08.

19 [Signature]
 ERICK L. GUZMAN
 Defense Counsel for LOPEZ-DELGADO

20 Dated: 4/14/08

21 [Signature]
 EVER DANIEL LOPEZ-DELGADO
 Defendant

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to his country of origin.

SO ORDERED.

Dated: 4/17/2008.


United States Magistrate Judge